

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 01-50227-JRG
FILIAE ELIAPPO and JUDY ELIAPPO,
Chapter 13
Debtors.

ORDER ON FEE APPLICATION OF
DAVID A. BOONE

I. INTRODUCTION

The Court has before it the Application For Compensation filed by David A. Boone on February 27, 2002.

Following the filing of this petition, Applicant was awarded \$2,350 in compensation at the time the Chapter 13 plan was confirmed. This award was pursuant to the fee guidelines maintained by the Court.¹ Pursuant to the guidelines, the \$2,750 was composed of:

\$1,400 for the basic case; and an additional
\$750 if the case involves real property claims;
\$200 of the case involves vehicle loans or leases;...

¹ The Chapter 13 fee guidelines are the Court's attempt to predict what the typical case should cost a debtor when the specified aspects are present. It is the court's intent to accurately predict the legal in a case in an attempt to avoid the additional cost and delay of fee applications. As a general rule the fee guidelines accurately represent the legal fees in the great majority of cases.

1 Applicant now seek additional compensation in the amount of
2 \$1,248.

3 **II. THE NATURE OF THE CASE**

4 While the scheduled fee of \$2,350 included three components, it
5 does not appear there were problems in all of these areas. The vehicle
6 loan is \$30,179 and encumbers a 2000 Dodge Durango. There is no
7 suggestion of a problem in this area. The Eliapos have seven
8 unsecured creditors (five are credit cards) totaling \$14,480.98.
9 There are no apparent problems with unsecured creditors.

10 The debtors' problems stem from their inability to service the
11 mortgages on their home. Their home is located at 3802 Maui Drive in
12 San Jose and they value it at \$380,000. They have a first mortgage
13 in the amount of \$215,818 which had pre-petition defaults of \$9,600
14 according to the lender. There is also a second mortgage in the
15 amount of \$80,000 which was current at the time of the filing.

16 **III. DISCUSSION**

17 In seeking additional fees, applicant describes two basic areas
18 in which work was performed. The first deals with the normal
19 preparation of the petition, schedules and statement of affairs and
20 the moving of the case to confirmation. For this work applicant
21 billed 9.6 hours (26 time entries) at a cost of \$2,254. In a basic
22 case such as this the cost of these services should not exceed the
23 guideline amount of \$1,400 absent extraordinary circumstances.

24 No extraordinary circumstances are evident. There were two
25 objections by the Trustee. The first indicated that the debtors had
26 omitted their monthly property tax obligation from Schedule J -
27 Current Expenditures. Delinquent property taxes were set forth on
28 Schedule D so applicant was aware of the tax problem and neglected to

1 address it on Schedule J. The Trustee's second objection simply
2 pointed out that when applicant filed an amended plan for the debtors
3 it neglected to have one of the debtors sign it. Another
4 administrative error.

5 The second area of work involves relief from stay motions brought
6 by both the first and second mortgage holders. For this work
7 applicant billed 5.2 hours (20 time entries) at a cost of \$1,219. The
8 \$750 Guideline amount is normally sufficient to cover these problems
9 since the debtors are not required to file a response to the motion
10 and the hearing is conducted by telephone at no cost to the debtors.

11 **IV. CONCLUSION**

12 The problems faced by Applicant in this case seem no more
13 difficult than those faced by Chapter 13 practitioners on a regular
14 basis. There is no justification shown for the filing and
15 confirmation of the plan in this case exceeding the guideline amount
16 of \$1,400. A reduction of the difference is appropriate. The work
17 on the relief from the stay motion appears suspect. However, given
18 the debtors problems with their mortgage payments, the Court will not
19 second guess the time applicant invested in these motions.

20 The Court grants the application in the amount of \$394. This is
21 in addition to the \$2,350 approved at the time of confirmation. The
22 balance of the application is denied.

23 DATED: _____

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26 JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE

1 Case No. 01-50227-JRG

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5 UNITED STATES BANKRUPTCY COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

7 CERTIFICATE OF SERVICE

8
9 I, the undersigned, a regularly appointed and qualified Judicial
10 Assistant in the office of the Bankruptcy Judges of the United States
11 Bankruptcy Court for the Northern District of California, San Jose,
12 California hereby certify:

13 That I, in the performance of my duties as such Judicial
14 Assistant, served a copy of the Court's: ORDER ON FEE APPLICATION OF
15 DAVID A. BOONE by placing it in the United States Mail, First Class,
16 postage prepaid, at San Jose, California on the date shown below, in
17 a sealed envelope addressed as listed below.

18 I declare under penalty of perjury under the laws of the United
19 States of America that the foregoing is true and correct.

20 Executed on _____ at San Jose, California.

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LISA OLSEN

20 Devin Derham-Burk
21 Chapter 13 Trustee
22 P.O. Box 50013
23 San Jose, CA 95150-0013

David A. Boone, Esq.
LAW OFFICES OF DAVID A. BOONE
1611 The Alameda
San Jose, CA 95126

22 Office of the U.S. Trustee
23 280 So. First St., Rm. 268
24 San Jose, CA 95113